

PATENT  
USSN 08/228,926  
Atty docket: 674310-2430.1

### REMARKS

The Examiner is thanked for the courtesies extended during the telephone conferences on 2 November and 7 October 2005, whereby the undersigned was advised that prosecution of this application is no longer suspended (as it apparently had been suspended through the course of Interference No. 103,399 and prosecution of the Senior Party's applications).

Accordingly, the application remains pending, and the claims now pending and presented herewith are supported in the present application and the applications in the lineage of the present application. Indeed, in this regard, it is mentioned that in the prosecution of US Patent No. 5,942,235, especially as reflected in the claims thereof, it was deemed by the USPTO that the present application and predecessor applications described and enabled the term, "poxvirus" (e.g., "Vaccinia virus is the prototypic virus of the pox virus family"; *see also* "portions of the DNA of all pox viruses are similar"). And it is noted that US Patent No. 5,972,597 involves methods for replicating DNA and genome mapping.

Moreover, the claims now pending and presented herewith, are patentably distinct from the claims of any issued Paoletti patent and any pending Paoletti application.

It is respectfully submitted that the claims now pending and presented herewith are not subject to obvious double patenting as to any issued Paoletti patent and any pending Paoletti application, including the Paoletti patent(s) and/or application(s) that is (are) the subject of the previous double patenting rejection as to which the Terminal Disclaimer was earlier filed in the prosecution.

The claims now pending and presented herewith are indeed presented to avoid double patenting as to any issued Paoletti patent and any pending Paoletti application.

Indeed, it is specifically noted that only claims 48 and 49 (directed to recombinant vaccinia virus vP2, vP4, vP6 and vP22) were subject to a double patenting rejection as to US Patent No. 4,603,112; that to obviate only that double patenting

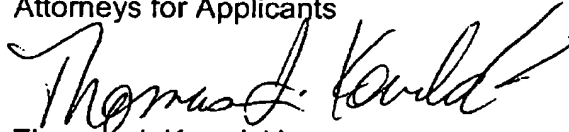
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rejection, a Terminal Disclaimer was filed; and, that by the amendments herewith the presently pending claims and claims herewith are not to recombinant vaccinia virus and are not dependent upon a recombinant vaccinia virus claim, out of an abundance of caution to avoid any double patenting issues that may extend beyond the original rejection of claims 48 and 49.

Accordingly, submitted herewith is a Petition To Withdraw Terminal Disclaimer.

If any Petition is required for the presentation of the claims herewith, it is respectfully requested that this paper serve as such a Petition. If any fee is required for the presentation of the claims herewith or for this paper, such a fee may be charged, and any overpayment credited, to Deposit Account No. 50-0320. If there is any impediment to withdrawal of the Terminal Disclaimer and allowance of the application, an interview is respectfully requested, with the Examiner respectfully requested to telephonically contact the undersigned to arrange a mutually convenient time and manner therefor.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants



Thomas J. Kowalski  
Reg. No. 32,147  
TEL 212-588-0800 FAX 212-588-0500